

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: St. Jude Medical, Inc. File No. 01-MD-1396
Silzone Heart Valves (JRT/FLN)
Products Liability Litigation

Minneapolis, Minnesota
May 4, 2005
1:39 P.M.

BEFORE THE HONORABLE JOHN R. TUNHEIM
UNITED STATES DISTRICT COURT JUDGE

(STATUS CONFERENCE)

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1 (In open court.)

2 THE COURT: You may be seated, everyone. Good
3 afternoon.

4 MR. ANGSTREICH: Before we go on the record, Your
5 Honor --

6 (Off-the-record discussion.)

7 THE COURT: Let's proceed with the hearing today.
8 This is civil case number 01-1396, In Re: St. Jude Medical
9 Silzone Heart Valves Products Liability Litigation. We
10 will have counsel note their appearances in just a moment.
11 Let's make sure that we have Mr. Jacobson by telephone.

12 MR. JACOBSON: I'm here.

13 THE COURT: He's there. Okay. We have got him.
14 Okay. Counsel, go ahead.

15 MR. CAPRETZ: Jim Capretz for the plaintiffs.

16 MR. ANGSTREICH: Steven Angstreich for the class.

17 MR. RUDD: Gordon Rudd for the class.

18 MR. MURPHY: Pat Murphy, plaintiffs' state
19 liaison counsel.

20 THE COURT: Good afternoon, gentlemen.

21 MR. KOHN: Steve Kohn for St. Jude Medical.

22 MR. STANLEY: Good afternoon, Your Honor. David
23 Stanley for St. Jude Medical.
24 THE COURT: Good afternoon to both of you. Okay.
25 We're here today for a status conference.

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1 Mr. Capretz, are you going to lead us off?

2 MR. CAPRETZ: I am. Nothing too exciting on the
3 agenda today, certainly not as interesting probably as your
4 current trial. The first matter we had, Your Honor, was
5 just a status report on the Eighth Circuit matter.
6 Regrettably from our view, we have heard nothing to date,
7 so we do not yet have a --

8 THE COURT: Still fully briefed, but no hearing?

9 MR. CAPRETZ: Still fully briefed, but we are
10 waiting. I'm told that you hear typically the first part
11 of the month when you have a hearing scheduled, so we're at
12 that first part of the month. I don't know if we're past
13 the time when we would know.

14 THE COURT: Usually they fill out their calendars
15 at least a month in advance, don't they, Mr. Rudd? Is
16 that --

17 MR. RUDD: That's our experience.

18 THE COURT: The calendars would now be for the
19 June setting. I haven't seen one yet, though, come across.
20 Usually we get copies of their hearing calendars as well.
21 I don't think I've seen one yet for June. Okay.

22 MR. CAPRETZ: We have told them that we're
23 prepared to argue at St. Louis or here or wherever they
24 would like. We would just like our place on the agenda.
25 THE COURT: That flexibility is probably helpful

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1 for them.

2 MR. CAPRETZ: Okay. The second matter concerns
3 the status of mediations, and I think I will just let Dave
4 Stanley address that.

5 THE COURT: Okay. Mr. Stanley?

6 MR. STANLEY: Thank you, Your Honor. Just real
7 quickly, we have I believe about 24 pending cases. Five of
8 those are class representatives for medical monitoring, so
9 19 or so injury cases. Of those we believe six are not
10 injury cases. They're just cases that we believe are
11 medical monitoring cases that we won't mediate, and then of
12 the rest, I believe that Mr. Angstreich and I settled two
13 cases this morning, or we're very close.

14 We have five other mediations set, and then we
15 have in the other cases -- we could go case by case if you
16 wanted -- discussions are still ongoing in every case.

17 THE COURT: So if those two do indeed settle,
18 there is eleven more in that category, then?

19 MR. STANLEY: Yes.

20 THE COURT: You have mediations set for five of
21 the eleven?

22 MR. STANLEY: We have formal mediation set in
23 five, and then either agreements that we will mediate once
24 we have collected the necessary medical records. I think
25 in two cases, the Murphy case and Neece case, that process

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1 just began a couple of months ago, and we're still trying
2 to collect all the records so we can mediate, and in the
3 rest of the cases, I think we have agreed to do what
4 Mr. Angstreich and I did this morning, which is try to
5 settle these cases but without having a mediator present.

6 THE COURT: I see. Okay.

7 MR. ANGSTREICH: Your Honor, if I could just say
8 one thing. It does look good with respect to two. There
9 was a third one. The offer has been discussed with counsel
10 in New York that brought the case to us. Counsel is
11 recommending that the client accept it. I spoke with the
12 client.

13 The client is pondering whether to accept it or
14 not, and so it's possible that we might have three
15 settlements.

16 THE COURT: In the pondering phase?

17 MR. ANGSTREICH: That's correct, in the pondering
18 phase.

19 THE COURT: The mediations that are set, the
20 five, are they in the month of May, or is it farther out,
21 do you know?

22 MR. STANLEY: Well, I think they're set in either

23 May or June.

24 THE COURT: Okay.

25 MR. STANLEY: I could give you dates if you

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1 wanted.

2 THE COURT: Okay. That's fine. I just wanted to
3 make sure that they were relatively soon. Okay. Anything
4 else on the mediations? Okay. Mr. Capretz?

5 MR. CAPRETZ: I think not at the moment, Your
6 Honor. The next agenda item concerns a couple more
7 pretrial orders, 44 and 45. These go to further extensions
8 in discovery and the expert discovery. I told my
9 colleagues that I had to abstain from voting, if you will,
10 on or agreeing to these extensions mainly because I have a
11 case in -- pending in Ramsey County that is dependent on
12 the experts.

13 And as a result, we can't go forward, and the
14 person is in precarious health condition, but I do
15 understand it's taken a long time, this extensive
16 discovery, and everyone seems to agree that these are
17 appropriate.

18 So Steve?

19 MR. ANGSTREICH: Your Honor, if I might.

20 THE COURT: Go ahead, Mr. Angstreich.

21 MR. ANGSTREICH: We are still attempting to

- 22 gather the AVERT documents. There is one more deposition
23 of one of the AVERT investigators that needs to be done.
24 There is a deposition next week of the FER person.
25 Mr. Jacobson's co-counsel, Mr. Silva, is going to be taking

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1 that deposition. There is a rescheduled deposition of
2 Monica Schultz.

3 Do we have a date on that?

4 MR. KOHN: No.

5 MR. ANGSTREICH: Monica Schultz needs to be done,
6 and once the documents are fully and completely collected,
7 then we will be in a position to turn them over to our
8 experts, along with completing the approximately three
9 depositions. We did take the one hour of Ms. Ellingworth's
10 deposition. Today I appreciate the Court's giving me that
11 one hour.

12 I don't know whether I really do appreciate it
13 because it was not much better than the four hours I spent
14 with her, but that should then bring us to a point where we
15 will then be in a position to have the experts. The
16 additional 60 days that we discussed with Mr. Stanley, we
17 believe it is necessary in order to get all of the
18 information together.

19 We recognize the need to get the discovery
20 completed. All of the individual cases that are still part
21 of the MDL they can't get back and they can't go forward

22 until we get the generic and expert generic discovery
23 completed. So we're well aware of that, but quite frankly,
24 we didn't realize the magnitude of the documents that we
25 had not gotten through the previous discovery requests.

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1 And that's being assembled, and as of, I believe,
2 today, there was another e-mail sent asking when we might
3 expect the remainder of the documents, and I haven't seen a
4 response to that.

5 THE COURT: So the proposed pretrial orders set
6 up what kind of a timing response?

7 MR. ANGSTREICH: We're to identify all our
8 generic experts by August 15th. The defendants will
9 identify their generic experts by September 21st. We'll
10 identify rebuttal experts by October 14th. The deposition
11 of generic experts will be taken November 1 and February 1,
12 and I guess that's the -- the timing that follows, taking
13 us out to February 1 of '06.

14 The fact, the generic fact discovery is extended
15 to July 5, and case specific is extended to August 15. 44
16 gives us the extension of generic fact discovery and the
17 case specific discovery. 45 takes the expert -- experts
18 out.

19 THE COURT: Okay. Great. Mr. Stanley or
20 Mr. Kohn, anything that you would like to say?

21 MR. STANLEY: No, Your Honor. They proposed the

22 60 days, and we're all in agreement.
23 THE COURT: Okay. So there is no disagreement
24 with the proposal, and the only issue is relative to
25 Mr. Capretz' concern, correct?

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1 MR. STANLEY: Correct.

2 MR. CAPRETZ: Yeah.

3 THE COURT: Okay. Well, the proposed orders look
4 to be fine. I would like to move things along as quickly
5 as possible, and if we can move these matters even faster
6 than what is indicated in there, that would be helpful. If
7 you look for any chance to move them a little bit more
8 quickly, I think that would be helpful for everyone so we
9 can get all of the discovery wrapped up.

10 And in particular the experts, I would like to
11 get that -- that process moving as quickly as we can.

12 Mr. Capretz?

13 MR. CAPRETZ: Okay, Your Honor. The last item,
14 although I have to say before I was going to add one of
15 these last minute items that Mr. Stanley likes to talk
16 about, because Mr. Angstreich after the last deposition was
17 wondering about one of those eastern European countries
18 where the suspects were being taken by the U. S. to be
19 interrogated, I guess that's what we were thinking of with
20 Ms. Ellingworth to get some better answers.

21 THE COURT: They have some methods in Uzbekistan

22 that we are trying to get changed, so I'm very familiar
23 with them, unfortunately.

24 MR. ANGSTREICH: I don't think they would have
25 helped, Your Honor.

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1 MR. CAPRETZ: The last point is the status of the
2 Ramsay County and Canadian cases. I think the Court
3 received from St. Jude Medical about a week ago an update
4 on the calendar. The numbers are the same. I didn't quite
5 frankly look to see if the names are different since some
6 cases have settled, but the numbers are the same as the
7 last report, as well as the numbers pending in the federal
8 and state court.

9 There is pending in Ramsay County approximately
10 25 of the cases. I think our case that I was referring to,
11 which is scheduled for the winter of 2005, is the only one
12 currently set for trial. That will probably have to be
13 pushed back because of the availability of the expert
14 testimony.

15 And Mr. Angstreich has a pending claim concerning
16 the European union claims that were here and transferred to
17 Ramsay County.

18 THE COURT: And that's been argued and not
19 decided yet?

20 MR. ANGSTREICH: No. It's been decided, Your
21 Honor.

22 THE COURT: It has?

23 MR. ANGSTREICH: Yes. Her Honor decided that as

24 Your Honor had ruled that it belonged in Minnesota, and it

25 will stay in her court. The next step will be a motion for

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1 class certification, and with respect to the other Canadian
2 cases, the notice is going out within approximately three
3 weeks for the class in Canada.

4 There are approximately seven Canadian cases
5 pending in Ramsey County. I think we filed seven, and the
6 next step that is going to happen there is that Canada
7 potentially has a cap on damages for personal injuries.
8 The defendant's position is that that cap is applicable.
9 Our position is that it is not applicable here, and it
10 probably wouldn't even be applicable in Canada under the
11 circumstances for which the cap was created.

12 So we are going to be filing a motion to submit
13 to the Court to determine whether or not the cap will be
14 applied. Regardless of what the ruling is, we believe that
15 once there is a ruling, whether there is or there isn't a
16 cap that we probably could then settle all of those cases
17 as well.

18 THE COURT: Okay. Do we know how many
19 individuals are receiving the notice in Canada?

20 MR. ANGSTREICH: Over 2,000.

21 MR. KOHN: No. It's only being issued in the

22 province of Ontario, Your Honor, and I think -- it's only a
23 ball park -- but somewhere in the neighborhood of 1300 we
24 estimate. 2,000 total in all.

25 THE COURT: In all of Canada?

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1 MR. KOHN: In all of Canada.

2 THE COURT: But the notice is just going out in
3 Ontario right now?

4 MR. KOHN: That's correct. There has been a
5 mediation in Ontario already.

6 MR. ANGSTREICH: There are class actions pending
7 in --

8 MR. KOHN: British Columbia, Quebec.

9 MR. ANGSTREICH: And Ontario, but I thought that
10 there was a proposal to mediate in British Columbia.

11 MR. KOHN: Possibly in British Columbia.

12 MR. ANGSTREICH: That's the status, Your Honor.

13 THE COURT: Okay. Mr. Capretz?

14 MR. CAPRETZ: The only addition to that report,
15 as far as the litigation is concerned, the Court will
16 recall I think it was set for the fall of 2006, October of
17 2006 for a common issues trial if it reaches that point.
18 And there was a matter, the class attorneys had applied for
19 fees, and St. Jude Medical asked that that be able to be
20 appealed, and the Court ruled that it could be appealed, so
21 that's the only other issue that is pending in the Canadian

22 litigation.

23 And with that, that's the only issue I have,
24 unless counsel for St. Jude Medical has something.

25 THE COURT: Let me just raise an issue, and I'm

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1 not going to resolve it today. It's just a matter that has
2 been raised to me in the -- in one of the individual cases
3 that has been settled. It's John and Ann Sutcliffe versus
4 St. Jude Medical. It's out of New Jersey.

5 A motion has been filed seeking a reopening of
6 the action to adjudicate the allocation of settlement
7 proceeds apparently triggered by a letter from the Medicare
8 Center. Anyone know anything about this at all?
9 Mr. Stanley?

10 MR. STANLEY: Yeah, I got, yesterday I got a copy
11 of the motion that had been filed, and there is a dispute
12 over Medicare, and Medicare is making a -- has a lien on
13 the settlement, and I was told that the motion was coming
14 but that the confidentiality of our settlement wasn't going
15 to be breached.

16 THE COURT: Okay.

17 MR. STANLEY: And so I think it's on the calendar
18 for a hearing somewhere back in New Jersey, which is where
19 the case was originally filed. That's really all I know
20 about it.

21 THE COURT: Okay. In the -- in the transferor

22 district?

23 MR. STANLEY: I believe so, in the District of

24 New Jersey.

25 THE COURT: Do you know anything, Mr. Angstreich?

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1 MR. ANGSTREICH: No, I didn't know that that had
2 happened. Mr. Savio hadn't contacted us.

3 THE COURT: Is there anything unusual about
4 New Jersey law that affects this?

5 MR. ANGSTREICH: No. It's all federal if it's
6 Medicare.

7 THE COURT: Okay. The motion I have indicates
8 that it's here in this district, filed by Mr. Savio. I
9 guess I will look more closely at it, and if anyone has any
10 thoughts on it, you may file any kind of response. That
11 will be helpful.

12 Otherwise we will look at it and see whether
13 there is anything that the Court needs to take up as
14 opposed to the transferor court. Okay. Anything else for
15 today? Let's see. When should we next gather? These, I
16 think we probably don't need to have a gathering in June.
17 Should we meet in July?

18 MR. CAPRETZ: That's fine, Your Honor.

19 MR. ANGSTREICH: That would be fine.

20 THE COURT: Is that okay?

21 MR. KOHN: Yes.

22 THE COURT: We surely can in June if anything
23 comes up that requires us to get together. I am around
24 most of the month, so it shouldn't be a problem. Let me
25 look at the July calendar.

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1 MR. ANGSTREICH: Your Honor, just to bring up one
2 other point. There is a matter that is before the special
3 master relating to certain discovery. I don't know how
4 that will be resolved, and if the resolution will require
5 it being brought to you.

6 If that is an issue, then we would hope that you
7 would do it by telephone rather than a formal conference.

8 THE COURT: We certainly would do it that way.
9 It would be better. Okay. In July, are you back in
10 Minnesota for anything scheduled in July?

11 MR. KOHN: Not so far as we know.

12 MR. ANGSTREICH: No.

13 MR. CAPRETZ: No, I don't think so.

14 THE COURT: We could do sometime the week of the
15 11th, perhaps? Is that --

16 MR. ANGSTREICH: Having my computer --

17 THE COURT: It's having a bad day or a slow day?

18 MR. ANGSTREICH: It's --

19 THE COURT: Stay away from the week of the 4th,
20 which probably runs into more vacations.

21 MR. ANGSTREICH: Right.

22 THE COURT: Either the week of the 11th or the
23 week of the 18th I think would be fine.

24 MR. ANGSTREICH: The 20th I know I'm in North
25 Carolina, Your Honor.

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1 MR. CAPRETZ: ATLA has their convention at the
2 end of July, so it would be better not at the end. The
3 week of the 11th seems to work.

4 THE COURT: Tuesday the 12th work?

5 MR. ANGSTREICH: I will tell you in one second.
6 My calendar is now up.

7 MR. JACOBSON: Your Honor, this is Joe. The 11th
8 and 12th are not good for me. I'm fine the rest of the
9 week.

10 THE COURT: How about the 13th?

11 MR. JACOBSON: I'm fine the 13th.

12 MR. CAPRETZ: What day of the week is that?

13 THE COURT: That's a Wednesday.

14 MR. ANGSTREICH: That's fine, Your Honor.

15 THE COURT: Okay.

16 MR. CAPRETZ: I do appreciate if the Court allows
17 us to make it the 1:30 time so I can catch a flight that
18 morning.

19 THE COURT: 1:30 is fine. We'll set it for 1:30
20 p.m. Wednesday the 13th of July. If we need anything
21 earlier, I assume the parties will be in touch, and if we

22 have a discovery related issue, we can handle that by
23 telephone.

24 Okay. Anything else for today? Thank you all
25 for being here. Travel well, and we will see you in a

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1 couple months. The Court is in recess.

2 MR. ANGSTREICH: Thank you, Your Honor.

3 MR. CAPRETZ: Thank you, Your Honor.

4 * * *

5 I, Kristine Mousseau, certify that the foregoing
6 is a correct transcript from the record of proceedings in
7 the above-entitled matter.

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11 Certified by:
Kristine Mousseau, CRR-RPR

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Dated: June 27, 2005

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